

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

RICHARD S. KOENIG

FAA Order No. 98-20

Served: October 9, 1998

Docket No. CP97WP0031

DECISION AND ORDER¹

Respondent Richard S. Koenig has appealed the December 10, 1997, order of Chief Administrative Law Judge Roy J. Maurer, which granted Complainant Federal Aviation Administration's request for summary judgment, found a violation of 14 C.F.R. § 107.20,² and assessed Koenig a \$500 civil penalty.³

Complainant has filed a motion to dismiss Koenig's appeal, arguing that Koenig failed to file a timely appeal brief.⁴ Complainant, however, has failed to take into

¹ The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 63 Fed. Reg. 37,914, 37,929 (July 14, 1998).

² "No person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area under § 108.9 or § 129.25 of this chapter."

³ A copy of the order granting summary judgment is attached.

⁴ 14 C.F.R. § 13.233(c) provides as follows: "*Perfecting an appeal*. Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker."

account the mailing rule,⁵ which provided Koenig 5 additional days to file his appeal brief. Because Koenig's appeal brief was in fact timely,⁶ Complainant's motion to dismiss is denied.

In his appeal brief, Koenig argues that the law judge erred in concluding that he admitted the violation in his answer to the complaint. (Appeal Brief at 2-5.) Koenig further claims that the law judge is an employee of Complainant FAA and thus has a "clear and unavoidable" conflict of interest. (Appeal Brief at 6.) Koenig requests dismissal of the case, for he believes that the alleged violation is too small a matter for the government to pursue any further. (Appeal Brief at 7.) Failing that, Koenig asserts his right to a hearing. (Appeal Brief at 3.)

The law judge correctly found that Koenig's answer admitted the violation of failing to submit to screening. As Koenig stated in his answer, this is what he did at the security checkpoint:

I became impatient and angry and went and grabbed my submitted backpack, which was still sitting there on the entrance end of the belt, where I had left it, and took off to meet my incoming flight.... The security attendants [sic] yelled at me, I told the guy (Mr. Walls): "[S]orry you had your chance and you blew it."

(Answer at 2.) Given the above-quoted statement from Koenig, the law judge correctly concluded that there was no genuine issue of material fact and that Complainant was

⁵ "Additional time after service by mail. Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period." 14 C.F.R. § 13.211(e).

⁶ The law judge served the order granting summary judgment on the parties on December 10, 1997. Under 14 C.F.R. § 13.233(c), Koenig had 50 days to file his appeal brief. The mailing rule of 14 C.F.R. § 13.211(e) provided Koenig an additional 5 days.

Koenig filed his appeal brief on February 3, 1998, 55 days after the order granting summary judgment. Thus, Koenig's appeal brief was filed before the deadline.

entitled to judgment as a matter of law.⁷ As the law judge stated, passengers may not proceed into the sterile area without screening simply because they feel the screening is taking too long. (Initial Decision at 2.)

In addition, contrary to Koenig's claim, the law judges who preside over FAA civil penalty cases are not employees of the FAA. Rather, they are employed by the U.S. Department of Transportation. Federal courts have upheld the adjudicatory system used in FAA civil penalty cases. See In the Matter of Mauna Kea Helicopters, FAA Order No. 97-16 at 5 n.5 (May 23, 1997) (reviewing the case law and noting that one of the ways the FAA's adjudicatory system ensures fairness is by providing for independent administrative law judges).

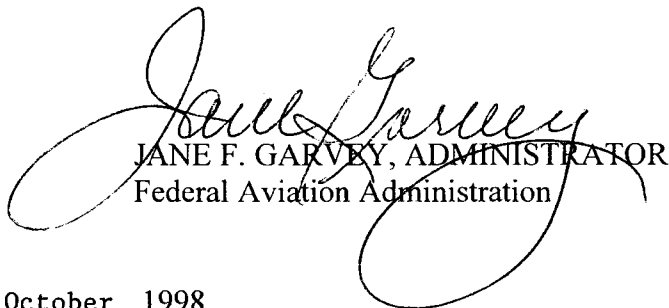
Refusal to submit to security screening is a serious matter. The screenings are designed to prevent violence and terrorism aboard aircraft.⁸

⁷ 14 C.F.R. § 13.218(f)(5) provides: "The administrative law judge shall grant a party's motion for decision if the pleadings ... show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law."

⁸ See In the Matter of Hoedl, FAA Order No. 92-58 at 6 n.6 (October 16, 1992), stating as follows:

The threat of terrorist attack is real. Indeed, the regulation Respondent ... violated was enacted in response to a continuing series of terrorist attacks in which people were kidnapped, tortured, and even murdered. See 51 Fed. Reg. 1350 (1986). The risk of missing a flight can never justify violating important security regulations.

For all of these reasons, the law judge's order granting summary judgment is affirmed, and a \$500 civil penalty is assessed.⁹


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 8th day of October, 1998.

⁹ Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1998).